

STEPTOE & JOHNSON LLP

Karen Lloyd
202.429.6496
Klloyd@steptoe.com

1330 Connecticut Avenue, NW
Washington, DC 20036-1795
DOCKET FILE COPY ORIGINAL
Telephone 202.429.3800
Facsimile 202.429.3802
<http://www.steptoel.com>

August 14, 1998

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Via HAND DELIVERY

Ms. Magalie R. Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

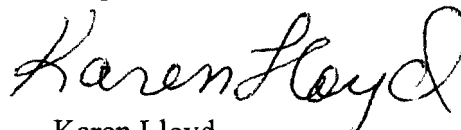
RE: **The Matter of Implementation of Section 255 of the
Telecommunications Act of 1996, Access to Telecommunications
Services, Telecommunications Equipment, and Customer Premises
Equipment by Persons with Disabilities, W.T. Docket No. 96-198.**

Dear Ms. Salas:

Enclosed please find for filing on behalf of the Telecommunications Industry Association ("TIA"), an original and nine copies of TIA's Reply Comments in the above-referenced proceeding.

Also enclosed is an additional copy of the Comments, which we ask you to date stamp and return with our messenger.

Respectfully submitted,



Karen Lloyd

Enclosures

No. of Copies rec'd 0+9
LIST A B C D E

**Before the
FEDERAL COMMUNICATIONS COMMISSION**

Washington, D.C.

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Access to Telecommunications Services,)	
Telecommunications Equipment, and)	
Customer Premises Equipment)	
By Persons with Disabilities)	

**REPLY COMMENTS OF THE TELECOMMUNICATIONS
INDUSTRY ASSOCIATION**

Grant Seiffert
Vice President, Government Relations
TELECOMMUNICATIONS INDUSTRY
ASSOCIATION
1300 Pennsylvania Avenue, N.W.
Suite 350
Washington, D.C. 20004

Dated: August 14 , 1998

FEDERAL COMMUNICATIONS COMMISSION

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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20541

EXECUTIVE SUMMARY

The Telecommunications Industry Association (TIA) is an association of over 900 companies who manufacture products for the telecommunications market. TIA member companies make the products that are used by carriers to provide telecommunication services and that initiate, route, and terminate the telephony, data and information that all Americans and a majority of the world's citizens receive and use each day.

TIA member companies are committed to ensuring that telecommunications equipment and customer premises equipment (CPE) are "designed, developed and fabricated to be accessible to and usable by individuals with disabilities, if readily achievable." This commitment is evidenced by the full participation of TIA and many of its member companies in all of the proceedings conducted by the FCC and of the Access Board to implement the guidelines and regulatory framework for Section 255. TIA supports Congress' goal of increased access to and ease of use of telecommunications products and services by persons with disabilities, to the extent "readily achievable."

Wise investment of resources for developing products which promote access will be the keystone for each manufacturer and for the telecommunications industry collectively in achieving these goals. All of the recommendations of TIA in its comments and in these replies are predicated on meeting these goals in ways that will use the resources of each manufacturer wisely. Manufacturers today, more than ever before, must stay competitive by achieving and maintaining quality, efficiencies, service and continuous innovation. Investing wisely is essential.

The most fundamental policy decision which the FCC will make in this proceeding is whether it will allow manufacturers to provide telecommunications equipment and

CPE using a product line approach rather than a product-by-product approach. TIA and several industry commentators addressed this bedrock issue in their comments. In these Reply Comments, TIA demonstrates why a product-line approach resulting in product differentiation will be the most effective strategy for increasing accessibility, including providing greater depth of access for particular functional limitations and products that meet access needs for a greater range of disabilities. In contrast, discouraging rules that discourage a product-line approach would favor access features for limitations more common in the population at the expense of features for others and will probably result in only simplistic access solutions, however, in almost every product. In order to achieve these gains for people with disabilities, the FCC must revise its proposed definition for "accessible" such that the accessibility "checklist" can be applied across product lines. TIA's proposed revision of the "accessible" definition recognizes and endorses manufacturers' discretion such that consumers could expect (and a manufacturer would be required to provide) the feature or features from the checklist in products across the manufacturer's own product line, to the extent "readily achievable." This revision would allow manufacturers to invest resources wisely to achieve results that are coordinated to specific functional limitations and reduce the resources spent on defensive actions for compliance rather than on solutions which promote greater access.

In one critical area, TIA and a majority of advocates for disabled persons agree with respect to another revision to the definition of "accessible." Usable product information and customer support are necessary for products to be accessible and are required by Section 255. This is a matter which has never really been in dispute and TIA recommends that the FCC clarify the importance of usability in its final order.

With respect to manufacturers' obligations to provide telecommunications equipment and CPE which is compatible with peripheral devices and SCPE, TIA learned much from the discussion and concerns raised by many commentators. In light of the comments, TIA has become convinced that the FCC can best ensure that resources are used wisely and effectively by instituting a listing process that provides manufacturers with clear notice of the SCPE for which compatibility must be provided, "if readily achievable," and permits the FCC to implement policy objectives, such as compliance with industry interoperability standards and the use of a standard connector.

Regarding the definition of "readily achievable," TIA is pleased that there is agreement that the FCC should adopt the definition to the telecommunications context to include technical feasibility. While not discussed in many of the initial comments, the concepts of cumulative cost and fundamental alteration, adopted from the ADA context, must also be a part of the FCC's implementation of "readily achievable" for Section 255. As all commentators agree, accessibility can be most effectively and efficiently implemented early in the design process. Therefore, TIA believes that the FCC should take a forward-looking approach to accessibility by adopting a bright line rule that manufacturers are not obligated to incorporate "readily achievable" access features into products that have already been introduced into the market either to comply with Section 255 or as a penalty for noncompliance. Furthermore, TIA agrees with the FCC's tentative conclusion that technological innovation should not be delayed because accessibility may not be "readily achievable" at the outset. Ultimately, technical access solutions for new technologies, such as digital platforms, should be found and the benefits reaped by all.

TIA agrees with the FCC that it should interpret the scope of Section 255 in a manner consistent with statutory definitions in the Telecommunications Act of 1996. Given the

plain language of the Act, information services are not subject to the requirements of Section 255. TIA also agrees with the FCC that "multi-use" equipment should be subject to Section 255 only to the extent the equipment is intended to serve a telecommunications function, and software should be covered by Section 255 only to the extent that it is integral to the equipment or CPE.

Manufacturers, service providers, individuals with disabilities and advocacy groups all expressed significant concerns with the FCC's proposed complaint resolution process. The comments support TIA's original view that "the fast track process needs to be eliminated" and call for a simpler approach to Section 255 complaints. TIA continues to believe that its proposed Dispute Resolution Process is an appropriate and comprehensive strategy for handling complaints. Therefore, TIA, along with numerous other commentors, recommends that the FCC adopt rules which require manufacturers to have point(s) of contact for consumer; that potential complainants be required to contact the manufacturer before a more formal complaint can be filed; and that 60 days to work with consumers to resolve issues or concerns is realistic given the individualistic and complex nature of many inquiries.

TIA and virtually all industry parties recommend that there should be a statute of limitations imposed for the filing of Section 255 complaints and in these replies, TIA recommends that 6 months from the date of purchase is a reasonable amount of time for any consumer, including those with a disability, to determine if a purchased product is capable of being used in the manner intended.

The overwhelming sense of the comments also support a standing requirement; TIA recommends that the FCC require that a complainant must be: (1) a person with a disability, or someone filing a complaint on behalf of a specific, identifiable individual with a disability

(such as a parent or legal guardian or representative organization that meets the legal standing requirements); and (2) who has purchased or used or has attempted to purchase or use a specific, identifiable piece of telecommunications equipment or CPE.

Lastly, TIA agrees with the Commission that it has the authority and it is right to exercise Commission discretion regarding the use of the Access Board's Guidelines.

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	THE ISSUE OF WHETHER THERE HAS BEEN A “MARKET FAILURE” HAS BEEN PAINTED WITH TOO BROAD A BRUSH, AND IN SOME RESPECTS, HAS MADE THE AREA OF DISAGREEMENT BETWEEN PERSONS WITH DISABILITIES AND INDUSTRY SEEM BIGGER THAN IT IS IN FACT.....	3
III.	THE FCC SHOULD ADOPT A PRODUCT-LINE APPROACH TO COMPLIANCE AS THE MOST EFFECTIVE STRATEGY FOR PROVIDING MEANINGFUL ACCESS FOR PERSONS WITH DISABILITIES.....	7
A.	The FCC’s Proposal Recognizes That A Product-line Approach To Compliance Can Result In Greater Accessibility But Should Go Further To Ensure Greater Accessibility.	8
B.	The Product-Line Approach Is An Alternative Strategy For Section 255 Compliance, Not An Additional Obligation.	9
C.	A Product-line Approach Will Be Most Effective In Meeting The Access Needs Generated By Different Functional Limitations.....	10
1.	A Product-line approach Will Permit Manufacturers to Provide Greater Depth of Access for a Particular Disability Within the Limits of What is Readily Achievable.....	10
2.	A Product-Line Approach Would Result in More Products that Accommodate a Range of Disabilities.	15
D.	ADA And FCC Precedent Support An Up Front Policy Of Product Line Compliance.	16
IV.	DEFINITIONS.....	18
A.	As Many Commentors Agreed, The Proposed Definition Of Accessibility In The Context Of Section 255 Should Be Revised And Clarified.....	18
1.	TIA Agrees With Disability Advocates That The Concept Of Accessibility Includes The Ability To Use Product Information And Customer Support Services.....	18
2.	The FCC Should Adopt the Section 255 Definition of “Accessible” Proposed by TIA.	19
3.	TIA supports the FCC’s tentative conclusion that the prohibition against reductions in accessibility should not operate to preclude legitimate trade-offs as products evolve or to impede technological innovation.	24

4.	Employee training should be left to manufacturers' discretion.	26
B.	Compatibility.....	27
1.	The FCC should adopt an approach to Section 255 compatibility that defines the universe of SCPE with which manufacturers have an obligation to be compatible and permits the FCC to achieve policy objectives such as compliance with industry standards.	27
2.	The compatibility requirement demonstrates the appropriate role for standards developed by existing standards-setting bodies, with consumer participation, in the future of Section 255 implementation.	30
C.	A "Manufacturer" For The Purposes of Section 255 Should Be The Entity Responsible for the Design, Development and Fabrications of Telecommunications Equipment and CPE.....	33
V.	READILY ACHIEVABLE.	34
A.	Manufacturers Should Not Be Required To Include "Readily Achievable" Access Features After A Product Has Been Introduced Into The Market.....	34
1.	In order to maximize the impact of resources available to provide access, the FCC should adopt a bright-line policy that Section 255 does not require manufacturers to modify products that have already been introduced to the market.....	34
2.	Similarly, the FCC should not require retrofitting of products as a penalty for noncompliance with Section 255.....	37
B.	Readily Achievable Factors.....	38
1.	Commentors Agreed that technical feasibility is an important part of the "readily achievable" determination.	39
2.	The FCC should recognize that "expense" requires considering the entire product which includes cumulative costs.....	40
3.	The FCC should not require manufacturers' to incorporate accessibility features if the product would be fundamentally altered.	40
VI.	THE FCC SHOULD INTERPRET THE SCOPE OF SECTION 255 IN A MANNER THAT IS CONSISTENT WITH THE STATUTORY DEFINITIONS PROVIDED IN THE COMMUNICATIONS ACT AND FCC PRECEDENT.	42
A.	Information Services Are Not Be Subject To The Requirements Of Section 255.....	42
B.	"Multi-Use" Equipment Should Be Subject To Section 255(C) Only If It Is Intended For Use With Telecommunications Services.....	47
C.	Software Should Be Covered By Section 255 Only To The Extent That It Is "Integral" To The Functioning of the CPE Or Telecommunications Equipment.	50
VII.	IMPLEMENTATION PROCESS.....	53

A.	Overview.....	53
B.	Fast Track Process.....	55
1.	Response Period.....	55
2.	Extensions of Time.....	61
3.	Mandatory Pre-Filing Contact.....	62
C.	Penalties.....	64
1.	Applicability of Section 207-208 and 312.....	64
2.	Section 251 (a)(2).....	67
D.	“Good Faith” Defense.....	68
E.	Statute of Limitations.....	69
F.	Standing.....	72
G.	FCC As Clearinghouse.....	73
H.	Document Submission/Confidentiality.....	74
I.	Declaration of Conformity.....	76
VIII.	The Commission Has Discretion To Adapt The Access Board’s Guidelines In Its Own Plan For Implementing Section 255.....	77
IX.	CONCLUSION.....	82

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**REPLY COMMENTS OF THE TELECOMMUNICATIONS
INDUSTRY ASSOCIATION**

I. INTRODUCTION.

The member companies of the Telecommunications Industry Association ("TIA") are committed to ensuring that telecommunications equipment and customer premises equipment ("CPE") are "designed, developed and fabricated to be accessible to and usable by individuals with disabilities, if readily achievable." This strong commitment to increasing the accessibility of telecommunications equipment and CPE is not an empty promise, but a significant one: together TIA's member companies manufacture or supply most of the products used in global communications networks. TIA's member companies have been in the forefront of the development of telecommunications equipment and CPE and have, thus, been an integral part of the telecommunications revolution that has had a dramatic and positive effect on the ability of

people, disabled and non-disabled alike, to access telecommunications, improving productivity and the quality of our lives.

To meet the needs of persons with disabilities, TIA, and its member companies have undertaken a number of outreach and education initiatives. TIA and its member companies have attended conferences sponsored by a number of disability organizations, conducted product testing and market research that has included persons with disabilities, and attended several conferences related to access issues. Some of TIA's member companies have established internal committees to oversee and to develop Section 255 implementation programs, while other companies have taken more informal approaches. In our experience, the marketing and engineering personnel responsible for product design and development in our companies are enthusiastic about Section 255 and see it as an opportunity – an opportunity to solve complicated technical problems, develop creative solutions, and make products that are easier to use and better-suited to the needs of the consumers, persons with and without disabilities.

TIA's Reply Comments fall into seven broad categories: (1) the debate concerning whether there has been a "market failure" and its consequences for Section 255 implementation; (2) why a product-line approach to compliance is the best implementation strategy; (3) statutory definitions; (4) what "readily achievable" means in the Section 255 context; (5) the appropriate scope of Section 255 (i.e., its inapplicability to information services and limited application to multi-use equipment and software); (6) implementation processes; and (7) the need for substantive FCC review of the Access Board's guidelines.

II. THE ISSUE OF WHETHER THERE HAS BEEN A “MARKET FAILURE” HAS BEEN PAINTED WITH TOO BROAD A BRUSH, AND IN SOME RESPECTS, HAS MADE THE AREA OF DISAGREEMENT BETWEEN PERSONS WITH DISABILITIES AND INDUSTRY SEEM BIGGER THAN IT IS IN FACT.

In order to adopt a regulatory framework that will, in the long run, best promote Section 255’s goal of increased accessibility, the FCC must first identify the nature and extent of the problem that Section 255 is intended to solve. In this proceeding, many commentators representing persons with disabilities have suggested that there has been a “market failure” in providing accessible telecommunications equipment and CPE for persons with disabilities.¹ At the same time, many of these same commentators argue that features designed to enhance accessibility will have negligible cost impacts for manufacturers because these features appeal to all consumers.² The vibrating pager, volume controls, and speaker phone are the examples most frequently cited in support of this argument – examples where the popularity of product features in the competitive marketplace prompted manufacturers to include those features in an increasing number of individual products. These criticisms of manufacturers’ past performance, which on the one hand, argue that the market has failed, and on the other hand, argue that based on past experience, the market will work to minimize manufacturers’ costs, appear to be in tension with each other.

¹ National Association of the Deaf (“NAD”) Comments at 26; Self Help for Hard of Hearing People, Inc. (“SHHH”) Comments at 3; Telecommunications for the Deaf, Inc. (“TDI”) Comments at 3.

² NAD Comments at 27; SHHH Comments at 14; TDI Comments at 19.

In TIA's view, the issue of whether there has been a "market failure" has been painted with too broad a brush, and in some respects, has made the area of disagreement between persons with disabilities and industry seem bigger than it is in fact.

In purely economic terms, a "market failure" occurs when there has been an inefficient allocation of resources in the market³ (i.e., supply does not meet demand) because of imperfections such as imperfect competition,⁴ externalities,⁵ or imperfect information.⁶ Therefore, as a matter of economics, it is incorrect to argue that the absence of a product that is accessible to a particular functional limitation in the marketplace in and of itself demonstrates that a "market failure" has occurred. As many of the commentators representing persons with disabilities implicitly concede, where the access needs of persons with disabilities have converged with the preferences of consumers in general, the market has functioned effectively to result in greater inclusion of those features in products.⁷

³ Paul A. Samuelson and William D. Nordhaus, Economics at 274-275 (16th Ed., 1998)

⁴ Imperfect competition arises, for example, where a supplier has a monopoly over a particular market and therefore, is able to charge inflated prices. Id. at 274.

⁵ Externalities are impacts on third parties that are not borne by the purchaser, such as the cost of pollution that harms the public but is not reflected in the cost of a product. Id.

⁶ Id. To date, the process of Section 255 implementation (the TAAC, the comments submitted in response to the FCC's NOI, the Access Board's NPRM, this NPRM, and the outreach efforts conducted by TIA and its member companies) has generated a great deal of information about the access needs of persons with disabilities that manufacturers will be able to consider in the product design process.

⁷ Historically, manufacturers of specialized CPE ("SCPE"), who have greater expertise related to the access needs of persons with particular functional limitations, have specialized and realized efficiencies in providing products to meet these needs that do not converge with the preferences of consumers in general.

TIA recognizes that Section 255 will require manufacturers to include features that increase accessibility if “readily achievable,” even if those features are not economically justifiable on their own.⁸ TIA recognizes that Congress, in enacting Section 255, made a determination that as a matter of social policy, accessibility, “if readily achievable,” is both desirable and required.

In TIA’s view, however, this discussion of the extent to which the market has and has not provided equipment and CPE that is accessible to persons with disabilities has two important consequences for the FCC in determining the kind of regime that is appropriate for implementing Section 255.

First, to the extent that the needs of persons with disabilities converge with the preferences of non-disabled customers, market competition has and will ensure that those features are included in an increasing number of products, typically at an increasingly reduced cost. The FCC does not need to exercise its regulatory authority to ensure that this category of solutions is implemented, but should adopt regulations that encourage such solutions to be developed so that this convergence can be maximized. For this category of features, there is little advantage to be gained by requiring manufacturers to incorporate these features into each and every product, if readily achievable – if the feature is popular, manufacturers will respond to market pressure to include it in more products. Furthermore, for this category of features, an overly rigid, product-by-product “checklist” approach to accessibility has a significant downside:

⁸ In this respect, TIA agrees with many of the commentators representing persons with disabilities, who argued that manufacturers are required to provide access, “if readily achievable,” even if manufacturers do not recover any of the costs of providing such access. See, e.g., NAD Comments at 27; SHHH Comments at 17-18; National Council on Disability (“NCD”) Comments at 21; TDI Comments at 20.

it is likely to stifle innovation. In addition, this type of regime imposes substantial compliance costs that do not result in any tangible gains in accessibility.

Second, where the access needs of persons with disabilities and the preferences of non-disabled consumers do not converge,⁹ the FCC faces a policy question of how the “readily achievable” resources available to provide access for a range of functional limitations can be allocated most effectively and efficiently.¹⁰

As TIA demonstrates in these Reply Comments, a product-line approach, which promotes product differentiation, is the most effective strategy for implementing Section 255. The product-line approach avoids unnecessary FCC regulation for the situations where features that enhance accessibility have broad market appeal, and preserves an environment in which the innovation required to develop access solutions with broad market appeal can flourish. Furthermore, where features that enhance accessibility do not have broad appeal, a product line

⁹ Examples of such features might include a TTY connector, which has no value for a person who does not use a TTY, or big buttons that substantially increase the size of a wireless phone.

¹⁰ Economist Alan S. Blinder challenges public policy makers to consider both equity and efficiency in carrying out their tasks. Alan S. Blinder, Hard Heads - Soft Hearts: Tough-Minded Economics for a Just Society 29 (1987). With respect to Section 255, the Congress has established the equity objective – ensuring that services and equipment are accessible to and usable by individuals with disabilities, to the extent that it can be accomplished “without much difficulty or expense.” 42 U.S.C. § 12181(9). It remains for the Commission to carry out Congress’ equity objective in an efficient manner. Here Blinder urges policy makers to engage in their task with a “respect for efficiency” (ensuring that in making some individuals better off, no one is made worse off), “attention to facts,” “logical” thinking, and “obedience to the laws of arithmetic.” Blinder, at 18, 23. Finally, Blinder admonishes public policy makers to ensure that the costs and benefits of the policies they implement are reasonably in balance, and to avoid policies which involve large and diffuse – essentially hidden – losses (i.e. costs which are spread, in small amounts, over a large population) to provide benefits that are substantially smaller than the costs. Id. at 202.

approach permits manufacturers the flexibility to do what is "readily achievable" to include features that accommodate a range of functional limitations in products with similar functions, features, and price.

Finally, a product-line approach to compliance addresses many of the concerns raised by persons with disabilities in their initial comments. A product-line approach will: (a) permit manufacturers flexibility to provide more meaningful levels of access to particular functional limitations in a given product; (b) increase manufacturer accountability for meeting the range of access needs generated by different functional limitations; and (c) reduce the importance of market considerations in determining what is "readily achievable."

III. THE FCC SHOULD ADOPT A PRODUCT-LINE APPROACH TO COMPLIANCE AS THE MOST EFFECTIVE STRATEGY FOR PROVIDING MEANINGFUL ACCESS FOR PERSONS WITH DISABILITIES.

As TIA argued in its initial comments, the limits of the readily achievable standard, the inherent complexity of providing access to persons with different functional limitations that frequently generate conflicting access needs, and ADA and FCC precedent dictate a product-line approach to compliance as the most effective strategy for achieving the goals of Section 255. The product-line approach, which has virtually unanimous support within the telecommunications industry,¹¹ will permit innovation to flourish and encourage the product differentiation that is critical to meeting the access needs of persons with disabilities.

¹¹ See, e.g., Cellular Telecommunications Industry Association ("CTIA") Comments at 12; Multimedia Telecommunications Association ("MMTA") Comments at 7-8; Nextel Communications, Inc. ("Nextel") Comments at 6.

A. The FCC's Proposal Recognizes That A Product-line Approach To Compliance Can Result In Greater Accessibility But Should Go Further To Ensure Greater Accessibility.

The FCC's NPRM recognizes that a product-line approach to compliance could result in more accessibility. The FCC acknowledges that:

In the marketplace, providers must decide what features to include and what features to omit. We believe it is reasonable for an informed product development decision to take into account the accessibility features of other functionally similar products the provider offers, provided it can be demonstrated that such a "product line" analysis increases the overall accessibility of the provider's offerings.¹²

As a result, the FCC proposes to permit manufacturers to adopt a product-line approach to compliance, which manufacturers can then rely upon in defense to a complaint alleging that an individual product is not accessible, so long as the manufacturer can establish that the product-line approach results in an overall increase in accessibility.

The FCC's recognition of the advantages of a product-line approach to compliance is correct as far as it goes, but it does not go far enough. Instead of permitting manufacturers to rely upon product line and an overall increase in accessibility as an uncertain defense in the context of a complaint, the FCC should recognize, as a matter of policy, that the product-line approach to compliance will actually result in more accessible products that are

¹² NPRM ¶ 170 (emphasis added). TIA's proposed product-line approach, like the FCC's proposed "similar product" defense, would require each manufacturer to identify another accessible product with comparable features, functions and price that it makes. In this respect, TIA's concept of product line is different from that proposed by the Consumer Electronics Manufacturers Association ("CEMA"), which would allow manufacturers to identify other accessible products in the marketplace as a whole. See CEMA Comments at 13.

useful to persons with disabilities.¹³ Consequently, the FCC should endorse a product-line approach to compliance "up-front" in defining manufacturers' obligations under Section 255.

B. The Product-Line Approach Is An Alternative Strategy For Section 255 Compliance, Not An Additional Obligation.

Several commentors suggested that the FCC should not consider the accessibility of other comparable products within a product line unless the manufacturer first establishes that it was not "readily achievable" to make the individual product complained of accessible.¹⁴ This suggestion is misplaced. If the FCC adopts the product-by-product approach advocated by some, once a manufacturer establishes that it was not readily achievable to make the individual product accessible -- the manufacturer has met its statutory obligation -- access is not required. There would not be any secondary inquiry into the accessibility provided in the manufacturer's product line.

As the discussion below demonstrates, a product-line approach to compliance will result in equal or greater accountability to ensure that manufacturers make products that: (1) have real potential to improve the lives of persons with disabilities by providing meaningful levels of access; and (2) accommodate a broad range of functional limitations.

¹³ Since the product-line approach will result in more accessible products, the FCC should not require manufacturers to make any showing of an increase in accessibility in defending against a complaint.

¹⁴ See, e.g., American Council of the Blind ("ACB") Comments at 4; TDI Comments at 7; World Institute on Disability ("WID") Comments at 4; SHHH Comments at 31; NCD Comments at 26.

C. A Product-line Approach Will Be Most Effective In Meeting The Access Needs Generated By Different Functional Limitations.

- 1. A product-line approach will permit manufacturers to provide greater depth of access for a particular disability within the limits of what is readily achievable.**

The FCC should endorse a product-line approach to compliance "up front" to encourage manufacturers to utilize the resources they have dedicated to providing accessibility as effectively as possible to provide meaningful, rather than superficial, levels of access for persons with a variety of functional limitations and access needs.¹⁵ Meaningful access for persons with a given functional limitation entails the accessibility of many product features and functions, not just the most basic ones. The FCC should give manufacturers the flexibility to rise to the challenge of providing products with a meaningful level of access, which will not only be more desirable to persons with disabilities, but will also permit them greater access to telecommunications technology and all of its attendant recreational and job-related benefits.

TIA's member companies accept their obligations under Section 255 to provide telecommunications equipment and CPE that are accessible, or alternatively, compatible, "if readily achievable." As defined by Congress, the efforts that manufacturers must take to comply with Section 255 are limited to those that can be accomplished "without much difficulty or expense." What a manufacturer can accomplish within the parameters of the readily achievable standard to accommodate any single disability is limited -- what can be done to accommodate multiple functional limitations in a single CPE product is even more limited. As TIA has

¹⁵ See TDI Comments at 6 ("TDI is concerned that 'superficial access' that will have limited value will prevail"). While TIA shares TDI's concern, TIA reaches a different conclusion -- that a product-line approach to compliance will provide more meaningful levels of access.

emphasized throughout this proceeding, ADA precedent and the language of Section 255 itself dictate that the FCC consider the cumulative cost of access features to be incorporated into a product to determine what is "readily achievable" and therefore required for compliance.¹⁶

Under the Access Board's definition of "accessible," which the FCC proposes to adopt, a manufacturer would be required to make product inputs, outputs, displays, mechanical and control functions accessible to persons with a variety of functional limitations and combinations of functional limitations.¹⁷ This definitional approach precludes coordinated consideration of the accessibility of product inputs and outputs, and could lead to products with feature combinations not desired by any users.

TIA strongly recommends that the FCC adopt a definition of accessible that will invest manufacturer resources rationally. An approach which authorizes manufacturers to make decisions about how to maximize access given the resources available is consistent with the discretion that manufacturers "must [exercise in] decid[ing] what features to include and what features to omit"¹⁸ in individual products. The FCC's justifiable and well-intended desire to

¹⁶ DOJ Preamble, 28 C.F.R. Part 36, App. B.

¹⁷ The FCC can and should improve the definition proposed by the Access Board. Access Board Guidelines §§ 1193.41, 1193.43. The FCC proposes to adopt the Access Board's definition of "accessibility," which comprises an 18 point checklist of accessible product functions which must be assessed independently. The independent assessment is whether each of the 18 criteria is readily achievable and therefore required under Section 255. In reality, the Access Board's checklist contains more than 18 criteria: for example, in addition to the 18 criteria listed, the Access Board included a requirement that "[t]elecommunications equipment and customer premises equipment . . . pass through cross manufacturer, non-proprietary, industry-standard codes, translation protocols, formats or other information necessary to provide telecommunications in an accessible format." See *NPRM* ¶ 75; *NPRM* App. C at C5. Thus, the 18 point checklist could actually be considered "18 point-plus." For purposes of this document, reference to the "18 point checklist" includes the 18 points adopted by the Access Board plus the others described above.

¹⁸ *NPRM* ¶ 170 (emphasis added).

require manufacturers to provide products that are accessible to a range of functional limitations only makes sense when evaluated on a product-line basis.

In the NPRM, the FCC tentatively rejected a product line definition of compliance, tentatively concluding that manufacturers should not be absolved from considering each item on the accessibility checklist for each product,¹⁹ even though the proposed “similar product” defense might ultimately excuse them from having to incorporate an access feature into an individual product. While the FCC urges that the Access Board’s guidelines defining accessibility should not be treated as a “‘laundry list’ of requirements all firms subject to Section 255 must adopt,”²⁰ this is precisely the approach to compliance that the FCC’s proposal encourages. How will manufacturers be able to demonstrate that they considered each item on the checklist? Either they will build a record to document their decision that it was not readily achievable, resulting in no access gains²¹ or show that access features were readily achievable by doing something about it. Faced with the prospect of complaints about every product to every disability, manufacturers seeking to comply in good faith with Section 255 will have an incentive under the FCC’s proposed rules to try to “cover as many bases” (*i.e.*, items on the accessibility checklist) as possible superficially within the prescribed limits of what is “readily achievable.” The result will be inclusion of several relatively inexpensive features that have a minimal impact on the fundamental nature of the product at issue, and will, in all likelihood, result in only minor increases in the accessibility of the product to persons with disabilities.

¹⁹ See NPRM ¶ 169.

²⁰ NPRM ¶ 166.

²¹ As the study by Strategic Policy Research (“SPR”), submitted as Appendix A to TIA’s initial comments demonstrates, the costs of documenting compliance alone (which generate no concrete gains in accessibility) will be substantial.

In contrast, the inclusion of features that provide meaningful increases in accessibility for persons with disabilities, i.e., voice chips and visual displays, is likely to entail significant cumulative costs and impacts to fundamental product characteristics. As many commentators emphasized,²² making a product with the features and functions to promote full access for even a single disability is extremely complicated. Manufacturers must assess and remedy issues raised by the dozens of input, output, control, and mechanical functions involved in even the most simple CPE products. Every product design effort is constrained by a set amount of product memory, battery life and defined parameters of cost, size and marketability for each product. Any and all features and functions must “fit” in the product’s memory, battery life, and other defined product parameters. Within the parameters of the “readily achievable” standard, TIA’s member companies will make their best efforts to include product features accessible to more than one functional limitation; however, there will be many products where this simply is not possible. Consequently, TIA urges the FCC to adopt a product-line approach to compliance, which encourages manufacturers to focus their efforts on providing representative products within a product line that provide meaningful levels of enhanced access for a range of functional limitations.

Moreover, the product-line approach is likely to minimize the importance of marketability in determining whether an access feature is readily achievable. Many disability advocates objected to the FCC recognizing any market considerations in the determination of

²² E.g., Motorola, Inc. (“Motorola”) Comments at 24-32; Philips Consumer Communications (“Philips”) Comments at 3; United States Telephone Association (“USTA”) Comments at 9.

what is “readily achievable.”²³ In TIA’s view, regardless of whether marketability is expressly identified by the FCC as a separate factor, the concept of marketability is closely intertwined with the concepts of cumulative cost and fundamental alteration, which TIA has advocated should be recognized as factors. A product too costly because of the inclusion of features which promote access, likely will not be marketable. TIA recognizes that features which promote access may also have general market appeal in many instances, e.g., vibrating alert or backlight display. Even where such features have general market appeal, however, product design teams must have discretion to determine whether such features can be included without fundamentally altering the product or rendering it unsuitable for the target market that it was designed to serve. Similarly, the inclusion of access features could fundamentally alter the nature of a product so that it no longer meets the needs of the market segment that it was designed to serve.

Rather than “creating a loophole for evading Section 255 obligations,”²⁴ a product-line approach is likely to make it more difficult for a manufacturer to establish that it was not “readily achievable” to incorporate an access feature anywhere in its product line for marketability reasons related to cost or fundamental alteration.²⁵ If the FCC focuses on the overall market for a family of products, such as two-way pagers, it is far more likely to find that some segment of that market would pay more money, or sacrifice some other product feature for

²³ See, e.g., ACB Comments at 4; Advocacy Center Comments at 2; Governor’s Council on Disability (“GCD”) Comments at 1; SHHH Comments at 16; TDI Comments at 16-21.

²⁴ NPRM ¶ 170.

²⁵ In this respect, the product-line approach may strike a more appropriate balance between the understandable concerns expressed by disability advocates that Section 255 not be interpreted in a way that requires access to generate economic benefits, such as cost recovery, and manufacturers’ equally legitimate concern that Section 255 not be implemented in a way that forces them to make products that are not unmarketable and unprofitable.

an enhanced visual display, for example, than if it focuses on the target market for an individual pager. In this example, the FCC would be more likely to find that providing this access feature was “readily achievable” under a product line analysis than it would under a product-by-product approach.

2. A product-line approach would result in more products that accommodate a range of disabilities.

A product-line approach will generate at least as many, if not more, accessible products than a product-by-product approach by ensuring that manufacturers are making products that meet the needs of a broad range of people with disabilities.

Conflicting needs generated by different disabilities mean that it is not technically feasible, and therefore, not “readily achievable” to make every product accessible to every person.²⁶ A product-by-product approach to compliance is no more likely to ensure that the range of sometimes conflicting access needs is met than a product-line approach. For example, some persons with motor control disabilities need large buttons for accessibility, whereas others with a limited range of motion may need buttons that are curved and placed closely together. Since a manufacturer cannot include two sets of buttons without fundamentally altering the nature of the product, the conflicting access needs for persons with motor control disabilities probably cannot be met within the limits of the “readily achievable” standard. Consequently, it is inevitable that a manufacturer will need to exercise discretion in choosing which of these competing access needs to accommodate. Under a product-by-product regime, the manufacturer

²⁶ See, e.g., Cellular Phone Task Force Comments at 2-4 (pointing out that the visual displays and other features that enhance access for persons with some disabilities actually make products less accessible to persons with electrical sensitivity).